

that a person to whom an executory devise or bequest is made need not be in esse at the time the will becomes effective. Miller, supra, § 239, note 15. Cf. Barnum v. Barnum, 42 Md. 251, 312; Pennington v. Pennington, 70 Md. 418, 439. See also Inglis v. The Trustees of The Sailor's Snug Harbour, 3 Pet. (28 U.S.) 99, 115, 144; Ould v. Washington Hospital, Etc., 5 Otto (95 U.S.) 303, 313, 315; Miller, supra, § 241, p. 691; Thompson, supra, p. 539; 2 Tiffany, Real Property (3d ed.) § 360. The common law rule that a devise in praesenti must fail because the vesting cannot be held in vacuo, is not applied because it is reasoned that in the case of an executory devise or bequest the title devolves conditionally upon the heirs, or passes conditionally into the residue, until the objects come into being. In the instant case there is no problem as to the rule against perpetuities, because of the time limitation.

On the point of intention, it would appear that the testator contemplated that the property would devolve upon his heirs prior to the incorporation, subject to divestment if the condition was met, when he declared that his will should not be construed so that his relations or others should inherit, "except in the manner and for the uses above herein specified." Identical language, to that in the passage hereinbefore quoted in full from the will, was construed in the Inglis case, supra, pp. 105 and 113, to mean that where the estate devolves upon